

BOARD OF APPEALS CASE NO. 5126

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BEFORE THE

APPLICANTS: Paul & Heather Cisar

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct a dwelling with
deck within the required rear yard setback;
2 Poplar Grove Avenue, Aberdeen**

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OF HARFORD COUNTY

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Hearing Advertised

HEARING DATE: March 19, 2001

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Aegis: 2/14/01 & 2/21/01

Record: 2/16/01 & 2/23/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Paul and Heather Cisar are seeking a variance, pursuant to Section 267-36B, Table IV, of the Harford County Code, to construct a dwelling within the required 50 foot rear yard setback (29 feet proposed), and a variance pursuant to Section 267-23C(1)(a)(6), to construct a deck within the required 38 foot rear yard setback (16 feet proposed) in an Urban Residential District.

The subject property is located at 2 Poplar Grove Avenue, Aberdeen, Maryland 21001 and is more particularly identified on tax Map 63, Grid 3A, Parcels 153, 234, 348, 349, 371. The property is zoned R1/Urban Residential, consists of 1.1026± acres and is entirely within the Second Election District.

The Applicant, Mr. Paul Cisar appeared and testified that the parcel is currently improved by a small structure that was built years ago when many of the waterfront properties in the neighborhood were used as fishing or summer houses. The property fronts on Bush River and is very steeply graded. The existing dwelling is in the floodplain and much of the lot is wooded. He and his wife propose to demolish the existing home and add a new home to the property further back from the current location but still within the setback. The proposed location is the most level and is cleared. The location of the new dwelling was actually the old driveway area. According to the witness, the proposed location is the only practical location for the new dwelling due to the topography and heavy forestation, which also make the property unique. While the new dwelling will create a greater setback, it will also be higher in elevation.

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Upon questioning by John Landbeck who appeared on behalf of adjoining property owners, Mr. And Mrs. Scholtholt, the witness testified that currently a lot of wood is used to heat the house which creates a good deal of chimney smoke. This has caused the neighboring property owner some distress. The higher elevation of the house coupled with the design will locate the new proposed chimney higher than the old chimney and further away from the Scholtholt property. This relocation coupled with less of a need to use wood for primary heat due to modernization will alleviate much of the smoke conditions previously existing.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning. Mr. McClune testified that the Department considered the property quite unique because of its steeply sloping topography, heavy forestation and proximity to the waterfront. Mr. McClune went on to say that the proposed location was the best practical location for the new dwelling and that a new structure built to Code standards would be a vast improvement over the existing structure. The Department recommends approval of the variance requests finding that the new structure with the two variances would not be detrimental to adjoining properties nor would the purposes of the Zoning Code be materially impaired.

CONCLUSION:

The Applicants are requesting variances to construct a dwelling within the required 50 foot rear yard setback (29 feet proposed), and to construct a deck within the required 38 foot rear yard setback (16 feet proposed).

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

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The Hearing Examiner finds the subject parcel unique and, further, that the grant of the requested variances in this case will not impair the purposes of the Zoning Code or be detrimental to adjacent parcels and property owners. Overall, the proposal should represent a substantial improvement over the existing conditions found on the subject parcel.

The Hearing Examiner recommends approval of the requests, subject to the following:

1. The Applicants obtain any and all necessary permits and inspections for the demolition, the new dwelling, gazebo, shed and fence.
2. The Applicant shall not further reduce any setbacks.
3. The Applicants shall provide an elevation certificate with the building permit application.
4. The Applicants comply with the impervious surface requirements of the County Code. This shall include the requirement that the Applicants provide a mitigation plan subject to approval by the Department of Planning and Zoning. Such mitigation shall include, at a minimum mitigation in the amount of twice the new impervious surface area being created. The mitigation plan shall be submitted with the application for building permit.
5. The Applicant submit a site plan for review and approval by the Department of Planning and Zoning.
6. The final plat be recorded prior to permit application.

Date **APRIL 6, 2001**

William F. Casey
Zoning Hearing Examiner